

for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §1040.29 applies is to result in treatment of applicants to, or students of, the recipient in violation of §§1040.31 through 1040.33 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §1040.29 applies is to include in its transition plan and implement specific steps designed to encourage individuals of the previously excluded sex to apply for admission to the institution. The steps are to include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

§1040.31 Discrimination on the basis of sex in admission and recruitment prohibited: admission.

(a) *General.* No person shall, on the basis of sex, be denied admission or be subjected to discrimination in admission by any recipient to which §§ 1040.31, 1040.32, and 1040.33 apply, except as provided in §§ 1040.29 and 1040.30.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on that basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Deny an equal opportunity for admission on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionate adverse effect on persons on the basis of sex unless the use of the test or criterion is shown to predict validly success in the education pro-

gram or activity and alternative tests or criteria which do not have a disproportionate adverse affect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any persons on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; or

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by this subpart.

§ 1040.32 Preference in admission.

A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not give preference to applicants for admission on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.33 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may